

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Amendment to the Commission's)
Rules Regarding a Plan for Sharing)
The Costs of Microwave Relocation)

WT Docket No. 95-157

COMMENTS OF TENNECO ENERGY

Tenneco Energy ("Tenneco"), by its attorneys, respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice")^{1/} in the above-referenced proceeding. Tenneco has a direct financial interest in the subject of microwave relocation addressed in this proceeding. Tenneco utilizes licenses held by a wholly-owned subsidiary to operate private operational-fixed microwave facilities in the 1,850 to 1,990 MHz band ("1.9 GHz band"). Tenneco participated in the initial phase of this proceeding and supported the adoption of cost-sharing rules as a mechanism to facilitate the comprehensive, system-wide relocation of microwave facilities in the 1.9 GHz band.

In the Further Notice the Commission sought comment on: (1) whether the voluntary negotiation period for microwave relocation in the D, E and F blocks should be shortened from two years to one year;^{2/} (2) whether these changes should also be made to

1/ First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-196 (April 30, 1996) ("First Report and Order" or "Further Notice").

2/ Id. at ¶ 95.

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the voluntary and mandatory negotiation periods applicable to C block licensees;^{3/} and (3) whether incumbent microwave licensees should be entitled to reimbursement under the cost-sharing plan.^{4/} For the reasons set forth below, Tenneco opposes alteration of the current negotiation periods and supports the adoption of rules permitting incumbents to participate as claimants for reimbursement through the cost-sharing plan.

I. The Commission Should Not Alter the Negotiation Periods for the C, D, E, and F Blocks

In the Further Notice, the Commission stated that changing the negotiation periods "could potentially accelerate the deployment of PCS in the D, E and F blocks by speeding up the negotiation process and creating additional incentives for incumbents to enter into early agreements."^{5/} The Commission has also proposed to apply this reasoning to C block licensees. However, there is no empirical evidence in the record of this proceeding supporting the view that the current length of the voluntary negotiating period has in any way adversely affected the speed of band clearing.^{6/} Until the expiration of both the voluntary and mandatory negotiation periods for the A and B blocks on April 4, 1998, the Commission would not be in a position to make meaningful comparisons of the relative impacts of the voluntary and mandatory periods on actual band clearing.

3/ Id. at ¶ 97.

4/ Id. at ¶ 98.

5/ Further Notice at ¶ 96.

6/ In fact the Commission notes that "many voluntary agreements have already been reached or are now being negotiated between A and B block licensees and incumbents." First Report and Order at ¶ 13

PCS entities that have requested changes in the negotiation periods simply have assumed that a voluntary period means delayed negotiations while a mandatory period means rapid negotiations. This assumption implies that microwave incumbents would actively seek to delay relocation agreements during the voluntary negotiation period rather than enter into mutually beneficial relocation negotiations with PCS licensees. While Tenneco actively seeks to gain the best relocation agreement available during the voluntary negotiation period with A and B block licensees, it also wishes to relocate its microwave system as quickly and safely as economic considerations will allow so it can proceed with its principal business -- the delivery of 3.3 trillion cubic feet of natural gas annually to end users in 26 states, home to nearly 70 percent of all residents in the U.S.

The Commission should not make the changes in the negotiation periods requested by PCS licensees because any such changes would prejudice the interests of parties that bargained for the existing rules before the Commission in earlier proceedings.^{7/} The length of the negotiation periods was the result of a thoughtfully negotiated regulatory regime adopted only a short time ago by the Commission and is, by the Commission's own admission, working well. The existing relocation procedures adopted in ET Docket No. 92-9 were subject to extensive comment and open to all interested parties including prospective participants in the auctions.^{8/} Moreover, many microwave incumbents would likely be in the midst of relocation negotiations with winning C block bidders at the time amended rules are finally effective. Any change in the negotiation period would likely delay relocation

^{7/} First Report and Order at ¶ 11.

^{8/} First Report and Order at ¶ 10.

negotiations as both incumbents and PCS licensees would possibly interrupt the negotiations to reassess their bargaining positions.^{9/}

Alteration of the negotiation periods now would be inappropriate in light of the prior involvement of both incumbents and PCS proponents in the creation of the current negotiation periods. It would be harshly inequitable to incumbents, as their rights as initially adopted partially influenced their decision not to challenge further the underlying reallocation of the 1.9 GHz band. And, all of the investors in the A and B block licensees and the winning C block bidders "were on notice of the voluntary period when they bid for their licenses, and they presumably have factored the length of the period and the potential cost of relocation into their bids."^{10/}

II. Microwave Incumbent's Should be Permitted to Participate in the Cost-Sharing Plan

One of the most valuable aspects of the current cost-sharing plan from Tenneco's perspective is the potential favorable impact on relocation negotiations between large-system incumbents and A and B block licensees. The current cost-sharing plan facilitates system-wide relocations of larger microwave systems which have many links that are "out-of-band" for A or B block licensees, because A and B block licensees are afforded the opportunity to recover some significant part of the costs of relocating these links under the cost-sharing plan.

^{9/} See Id.

^{10/} First Report and Order at ¶ 13.

The proposal to permit microwave incumbents to seek reimbursement under the cost-sharing plan may prompt A and B block licensees to refuse to pay relocation costs for out-of-band links during voluntary and mandatory negotiations, preferring instead to shift this burden to the incumbents. This will likely delay clearing the 1.9 GHz band as it is reasonable to expect that affected incumbents will await the opportunity to negotiate with C, D, E and F block licensees before deciding to absorb the relocation costs internally and to seek reimbursement through the cost-sharing clearinghouse. Unlike PCS entities that entered into a new business requiring a commitment to multiple, large-scale microwave relocation negotiations, and that are staffed to administer claims before the clearinghouse, microwave incumbents such as Tenneco are not equipped to prolong the microwave relocation process. Tenneco seeks to be made whole with an expeditious relocation of its microwave system without the need for prolonged involvement requiring reimbursement under the cost-sharing plan.

Nevertheless, there are no guarantees under the Commission's current transition rules that Tenneco will be able to achieve a system-wide relocation in either voluntary or mandatory negotiations with PCS licensees. Even with participation of the winning bidders for C block licenses, Tenneco is not guaranteed relocation compensation for all 86 links in the 1.9 GHz band. For these reasons, Tenneco supports the adoption of rules permitting incumbents to claim reimbursement under the cost-sharing plan as a long-term safeguard. If a microwave incumbent relocates some of its own links in order to facilitate a contemporaneous system-wide relocation, subsequent PCS licensees who benefit from the

cleared spectrum should be required to reimburse the incumbent through the cost-sharing plan.

In adopting cost-sharing rules, the Commission should, among other things, consider the need to harmonize the rules with other aspects of the 1.9 GHz band transition plan, including the installment payment plan for PCS licensees classified as "designated entities." It does not stand to reason that microwave incumbents should be forced to underwrite the buildout of the very companies necessitating the substantial inconvenience of relocation. Further, as the results of the recently concluded C block PCS auction indicate, most if not all of these designated entities seem to have the resources to make full, lump-sum payments to incumbent and PCS relocators.^{11/} Moreover, the potential participation of incumbents in the cost-sharing plan dictates that the process of creating the cost-sharing clearinghouse be open and that the entity ultimately chosen to function as the clearinghouse administrator truly be a neutral third party. Tenneco therefore agrees with the Commission's decision to delegate to the Wireless Bureau the authority to select one or more entities, after notice and public comment, to create and administer a neutral clearinghouse.^{12/}

III. CONCLUSION

Tenneco urges the Commission to refrain from making any changes to the rules governing the negotiation periods for microwave relocation. These rules were the result of careful consideration and deliberation by the Commission and the parties to this

^{11/} The PCS C-block spectrum auction raised \$10.2 billion (See Communications Daily, May 7, 1996, at 1).

^{12/} First Report and Order at ¶ 85.

proceeding and were adopted by the Commission only a short time ago. Tenneco also supports the proposal to allow incumbents to participate in the cost-sharing plan with due consideration for the concerns and suggestions expressed herein.

Respectfully submitted,

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May 28, 1996